



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20370-5100

JRE  
Docket No: 7676-99  
12 October 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the comments of your counsel.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board rejected your counsel's contention to the effect that the Physical Evaluation Board (PEB) directed that you be retained on the Temporary Disability Retired List on or about 1 April 1999. Although a letter to that effect was erroneously sent to you by a member of the staff of the PEB, you were notified by the PEB on 2 April 1999 of its proposed findings that your disability had improved and was ratable at 20%. You accepted those findings on 11 August 1999, and were discharged with entitlement to disability severance pay.

The Board rejected your unsubstantiated contentions to the effect that you received bad advice from your military counsel, and that you would have received a higher rating had you not followed that advice. It was not persuaded that your condition was ratable above 20% disabling at the time of your discharge. In this regard, it noted that although you continued to experience neck pain with radiation into your right arm, as well as back pain, you were employed full-time and did not miss an inordinate amount of work because of your spinal conditions. In addition, you were found to have normal upper extremity strength; your

sensory examination was normal to light touch; you had normal deep tendon reflexes and a normal gait; and no back spasms or deformities were noted.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director